

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

FILED  
U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
FT. WORTH DIVISION

2013 NOV -6 PM 12:43

CLERK OF COURT

Daniel W. Nicholson  
Plaintiff

4-13CV-899-A  
Civil Action No.

v.

XTO/Exxon Energy Inc.  
Defendant

COMPLAINT

Negligence - Wrongful Death - Property Damage.  
Failure to exercise reasonable care during drilling  
operations in the area of Eden Rd and Matlock Rd  
in the City of Arlington, Texas.  
Defendant XTO/Exxon Energy Inc. failed in the  
duty to protect Vera Nicholson and family from  
effects coming from close proximity of the  
drilling process.

\* Attach additional pages as needed.

Date 11-6-13  
Signature D. W. Nicholson  
Print Name Daniel W. Nicholson  
Address 13641 S. 47th St.  
City, State, Zip Phoenix, Arizona 85044  
Telephone 520-431-0271 dwn757@yahoo.com

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

**DANIEL W. NICHOLSON**

**Plaintiffs**

**v.**

**XTO/EXXON ENERGY INC.**

**Defendant**

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**Civil Action No.**

**4 - 13 CV - 899 - A**

**COMPLAINT FOR NEGLIGENCE**

**1.) Statement of Jurisdiction.**

a. For diversity of citizenship jurisdiction; the plaintiff is a citizen of the state of Arizona.

b. The defendant is a citizen of the state of Texas and its principle place of business is within the state of Texas.

c. The amount in controversy exceeds the sum or value specified by 28 U.S.C. § 1332

**2.) Negligence**

a. Beginning March of 2010 to present; (The defendant) XTO Exxon Energy Inc. negligence in the duty to insure the safety of (The plaintiff)

mother and family inside dwelling or its neighbors during its drilling operations in the area of Eden Rd. and Matlock Rd. in the city of Arlington, Texas. Restatement (second) of Torts section 282-283 (1965) These sections essentially define negligence as an act or omission that creates an unreasonable risk of harm; or conduct that falls below what a reasonable person in similar circumstances would have done.

3.) As a result the plaintiff and family have suffered the death of a much loved and cherished mother (Vera Nicholson) of 800 Crystal Creek Ln. Arlington, Texas 76001.

4.) As a result the plaintiff mother's house at 800 Crystal Creek Ln. has multiple cracks in the foundation to include significant structural damages to home and property.

Therefore, the plaintiff asks for relief/damages judgment against the defendant in the amount of \$9,000,000.00.

Date: 11-6-13

Signature: 

Print name: Daniel W. Nicholson

Address: 13541 S. 47<sup>th</sup> St.

City, State, Zip: Phoenix, Arizona

Telephone: 520-431-0271

## BACKGROUND

Reference case 4:13-CV-00455Y

United stated District Judge Terry R. Means DISMISSED WITHOUT PREJUDICE to their refilling under federal rules of civil procedure 12(b) (1) subject matter of jurisdiction.

As Pro Se litigants during the time of the initial complaint, our awareness of the rights and rules under the federal courts of the United States was limited at best but we felt that the jurisdiction needed to be heard in this venue as the amount of relief exceeded \$75,000.00 and then we began this process.

Plaintiff intent is to present a case to the court that the loss of our dear mother was do to the cumulative effects of the chemicals used during the hydraulic fracturing drilling process very close and directly down wind from her house, resulted in her death and may have contributed to the deaths of four other close neighbors. Also to include numerous areas of property damage; we feel compelled to show in a court a claim upon which relief can be granted.

As we move forward in this process we intended to respectfully keep things simple for ourselves and the court and comply with the rules as Pro Se litigants.

## Argument

- A. The defendants no longer have a motion to dismiss under rule 12(b) (1) As the states of citizenship are different, this appears to be a subject matter of (Diversity Jurisdiction) along with the amount of relief exceeding \$75,000.00 should meet the requirements of the United States District Court for the northern district of Texas on the "subject matter of jurisdiction".
- B. The defendants should not have a motion to dismiss under rule 12(b) (6) as Daniel W. Nicholson will have evidence/discovery to share in the form of official reports/records, video/audio recordings, photographs, along with

expert testimony from medical doctors, toxicologist, and scientist/researchers. To include testimony from eye witnesses of these events showing negligence on the part of XTO/Exxon Energy Inc. to satisfy and simplify the plausible claim of "Wrongful death, pain, suffering, mental anguish, along with significant property damage" do to the drilling operations near the home. Respectfully this may comply with the requirements of "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face". Ref. Ashcroft v. Iqbal 556 U.S. 662, 664 2009.

Discovery can be shared with full cooperation upon request.

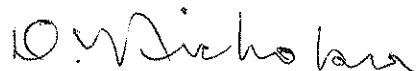
#### Summery

The plaintiff now has respectfully established (during refiling) the subject matter jurisdiction as (Diversity Jurisdiction) as the plaintiffs and defendant have citizenship from different states and the amount of relief requested exceeds \$75,000.00 (28 U.S.C. section 1332 (a) (1)

After careful review of the circumstances we are compelled to ask the court to find XTO/Exxon Inc. liable for negligence in this matter as they have failed to provide adequate oversight in its duties to protect its neighbors from harm and impact due to the drilling operations in close proximity to persons inside their homes along with damage to property. Ref. Torts section 282-283 (1965)

Respectfully submitted by Pro Se plaintiff

Daniel W. Nicholson  
13641 s. 47<sup>th</sup> St.



Phoenix, Arizona 85044

Telephone: 520-431-0271

JS 44 (Rev. 09/11)

## CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Daniel W. Nicholson  
13641 S. 47th St.  
Phoenix, Az 85044

(b) County of Residence of First Listed Plaintiff Maricopa Co.  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
N/A Pro Se  
520-431-0271

## DEFENDANTS

XTO/Exxon Energy Inc.  
810 Houston St.  
Ft. Worth, Texas 76102

County of Residence of First Listed Defendant Tarrant Co.  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

4-13CV-899-A

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☒ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332 (a) (1)

Brief description of cause:

Negligence ref Torts § 282 (1965).

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$ 9,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S)

PENDING OR CLOSED: (See instructions): JUDGE Terry R. Means

DOCKET NUMBER 4:13-CV-455-Y

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

FW 020673

RECEIPT #

AMOUNT

\$ 400

APPLYING IFP

JUDGE

A

MAG. JUDGE